

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

KENNETH H. TIBBETTS,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-23-913-J
)	
DAVID ROGERS, Warden)	
)	
Respondent.)	

**PRE-ANSWER MOTION TO DISMISS PETITION FOR WRIT OF HABEAS
CORPUS FOR FAILURE TO EXHAUST STATE REMEDIES AND BASED ON
THE *YOUNGER* ABSTENTION DOCTRINE**

Comes now Respondent, by and through the Attorney General of the State of Oklahoma, Gentner F. Drummond, and respectfully asks that the instant Petition for Writ of Habeas Corpus be dismissed for Petitioner's failure to exhaust state court remedies pursuant to 28 U.S.C. § 2254(b)(1)(A), of the Anti-Terrorism and Effective Death Penalty Act, and based on the United States Supreme Court's *Younger*¹ abstention doctrine.² Respondent has filed a Brief in Support of this Pre-Answer Motion to Dismiss which is being filed simultaneously herewith and which more fully explains and supports Respondent's position.

¹ *Younger v. Harris*, 401 U.S. 37 (1971).

² This Court's Order calling for a response states that "Respondent shall file an answer, motion or other response within thirty days from this order's date, consistent with Rule 5 of the Rules Governing Section 2254 Cases" (Doc. 8 at 1). In the event this Court denies this Pre-Answer Motion to Dismiss, Respondent respectfully requests permission to file a response on the merits. Respondent also reserves the right to raise any other applicable affirmative or procedural defenses at that time.

Wherefore, for the reasons contained within Respondent's Brief in Support, Respondent respectfully requests that this Court dismiss the instant Petition for Writ of Habeas Corpus without prejudice.

Respectfully submitted,

GENTNER F. DRUMMOND
ATTORNEY GENERAL OF OKLAHOMA

s/ TESSA L. HENRY
TESSA L. HENRY, OBA #33193
ASSISTANT ATTORNEY GENERAL
313 N.E. 21st Street
Oklahoma City, OK 73105
(405) 521-3921
(405) 522-4534 (FAX)
fhc.docket@oag.ok.gov

ATTORNEYS FOR RESPONDENT

CERTIFICATE OF SERVICE

X I hereby certify that on December 29, 2023, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing.

X I hereby certify that on December 29, 2023, I served the attached document by mail on the following, who is not a registered participant of the ECF System:

Kenneth H. Tibbetts, #122414
Joseph Harp Correctional Center
P.O. Box 548
Lexington, Oklahoma, 73051

s/TESSA L. HENRY